

U.S. Application Serial No.: 08/102,390
Second Communication Regarding Status of Application

EXHIBIT C

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTSAPPLIED RESEARCH SYSTEMS ARS
HOLDING, N.V.,

Plaintiff,

v.

CELL GENESYS, INC.,

Defendant.

C.A. NO. _____

COMPLAINT

Plaintiff Applied Research Systems ARS Holding N.V. (hereinafter "ARS"), for its
Complaint against defendant Cell Genesys, Inc. (hereinafter "Cell Genesys"), states as follows:

THE PARTIES

1. ARS is a company organized and existing under the laws of the Netherlands Antilles and having its principal place of business c/o ABN AMRO Trust Company (Curacao) N.V., Pietermaai 15, P.O. Box 4905, Curacao, the Netherlands Antilles.

2. On information and belief, Cell Genesys is a corporation organized and existing under the laws of Delaware with its principal place of business at 500 Forbes Boulevard, South San Francisco, California.

JURISDICTION AND VENUE

3. This Action arises under the patent laws of the United States, Title 35, United States Code. This Court is vested with subject matter jurisdiction in this Action pursuant to 35 U.S.C. §146 and 28 U.S.C. §§1331 and 1338(a)

4. On information and belief, Cell Genesys is subject to personal jurisdiction in this judicial district. Venue is proper in this judicial district pursuant to 28 U.S.C. §1391 and Fed. R. Civ. P. 4(k)(2).

BACKGROUND

5. This Action arises from the June 22, 2004 Decision on Preliminary Motions ("the Decision") of the U.S. Patent and Trademark Office Board of Patent Appeals and Interferences ("the Board") in Interference No. 105,114 ("the '114 Interference"). The subject matter of the '114 Interference was defined by Count I, which was directed to "a method according to claim 2 or claim 3" of ARS's U.S. Patent No. 5,272,071 ("the '071 Patent"), which names as inventor Scott C. Chappel. Claims 2 and 3 of the '071 Patent recite:

2. A method of modifying the expression characteristics of a predetermined gene within the genome of a cell line, comprising inserting a DNA construct into said genome by homologous recombination, said DNA construct comprising a DNA regulatory segment capable of modifying the expression characteristics of said gene when operatively linked thereto, as compared to its existing DNA regulatory segment, and a DNA targeting segment homologous to a region of said genome within or proximal to said gene, wherein said construct is inserted such that said regulatory segment is operatively linked to said gene of interest.

3. A method of modifying the expression characteristics of a predetermined gene within the genome of a cell line, comprising inserting a DNA construct into said genome by homologous recombination, said DNA construct comprising an expressible, amplifiable gene capable of amplifying said gene when inserted in sufficiently close proximity thereto, and a DNA targeting segment homologous to a region of said genome within or proximal to said gene, wherein said construct is inserted such that said amplifiable gene is in sufficiently close proximity to said gene of interest to cause amplification thereof when said amplifiable gene is amplified.

6. Plaintiff ARS is the assignee and real-party-in-interest of the '071 Patent. Cell Genesys purports to be the assignee and real-party-in-interest for U.S. Patent Application No. 08/102,390 ("the '390 Application"), which was also at issue in the '114 Interference.

DISSATISFACTION WITH THE DECISION

7. Plaintiff ARS repeats and re-alleges the allegations contained in paragraphs 1-7 as if fully set forth herein.

8. ARS is dissatisfied with the Decision and seeks reversal thereof insofar as the Board found that claims 1, 2, 5-7, 9-20, 22, 23, 25, 26, 32-39, 52-54, 56, and 57 of the '071 Patent are "unpatentable [sic: invalid]" over certain prior art, and insofar as the Board ruled against ARS on certain motions, claim construction issues, and evidentiary issues.

PRAYER FOR RELIEF

Plaintiff ARS prays for a judgment ordering and decreeing, *inter alia*, that:

1. Claims 1, 2, 5-7, 9-20, 22, 23, 25, 26, 32-39, 52-54, 56, and 57 of the '071 Patent are not invalid; and
2. ARS be awarded such other relief in law and equity, including costs and attorneys' fees, as the Court may deem just under the circumstances.

Respectfully submitted,

NIXON PEABODY LLP

By:



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